IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 40 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEHBOOBMIYA AHMEDMIYA MALEK

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 40 of 2002

MR EE SAIYED for Petitioner No. 1

MR KG SETH- PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 12/02/2002

ORAL JUDGEMENT

#. This is an application in revision under Section 397 read with 401 of the Criminal Procedure Code, 1973, challenging the order dated 20.12.2001 recorded by the learned Metropolitan Magistrate, Court No.12, Ahmedabad

City, dismissing the application of the petitioner for interim custody of truck bearing No.GJ-3T-676 pending disposal of Criminal Case No.1090/2001.

#. The learned Magistrate found that though the truck in question was entrusted to the petitioner in the past by way of interim custody on condition that it shall not be used for the purpose for which it was used in the said matter, the said truck again was used for the said purpose and, therefore, it would not be a good case for entrusting the truck to the petitioner by way of interim custody.

#. Having regard to the provisions made in the law and to the facts and circumstances of the case and in view of the fact that the petitioner undertakes to always remain with the truck whenever the truck is on motion, it would be in the fitness of things to entrust the truck by way of interim custody to the petitioner.

#. In that view of the matter, this Revision Application is partly allowed and the impugned order passed by the learned Magistrate is ordered to be set aside. The muddamal truck bearing No.GJ-3T-676 shall be entrusted to the petitioner on his furnishing solvent surety and P.R. in a sum of Rs.1 lac on following conditions :-

(a) The petitioner shall keep the truck in the present condition.

(b) The petitioner shall produce it before the Court concerned as and when so required.

(c) The petitioner himself shall be with the truck whenever the truck is in motion.

(d) The petitioner shall not transfer ownership and/or possession of the truck till the disposal of the case.

#. This Revision Application is accordingly allowed. Rule is made absolute to the above extent. D.S. is permitted.

(D.P. BUCH, J.)

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